IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 478 of 2007.

Decided on: 01.08.2007.

Kahan Singh. … … Petitioner.

Versus

The Secretary, H.P.S.E.B. and Another. … … Respondents.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?[1] *No.*

For the Petitioner: **Mr. Vikas Rathore, Advocate.**

For the Respondents: **Mr. Shrawan Dogra, Advocate.**

Rajiv Sharma, Judge:

A challenge has been laid to the award passed by the H.P. Industrial Tribunal-cum-Labour Court, Dharamshala, dated 13.6.2006 in reference No.120 of 2003.

The brief facts necessary for the adjudication of this petition are that the State Government had made the following reference to the H.P. Industrial Tribunal-cum-Labour Court, Dharamshala:-

> ***"Whether the termination of the services of Shri Kahan Singh S/o Sh. Bichhu Ram, by the Resident Engineer, Bassi Power House***

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[1] *Whether reporters of local presses may be allowed to see the judgment? No.*

Division, H.P.S.E.B., Joginder Nagar, Distt. Mandi, H.P. w.e.f. 19.3.1998 [2]without complying the provisions of the Industrial Disputes Act, 1947 and clause 14(2) of the Certified Standing Orders of the Board, junior to him are retained by the board is proper and justified. If not, what relief of service benefits and compensation the aggrieved workman is entitled to?"

The petitioner (hereinafter referred to as the workman for the convenience sake) had filed his statement of claim before the Labour Court. The workman had primarily contended before the Labour Court through his claim that he was retrenched without following the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) as well as sub-clause (2) of Clause 14 of the Certified Standing Orders framed by the Board. He had also contended that his retrenchment was in violation of the principle of "Last Come First Go". The employed had contested the claim and had raised the preliminary objection with regard to delay and laches in raising the industrial dispute.

Mr. Vikas Rathore had strenuously argued that the finding recorded by the Labour Court that there was delay in raising the dispute is not sustainable in the eyes of law. Mr. Shrawan Dogra had supported the award dated 13.6.2006.

I have heard the parties and perused the record. The workman was engaged on daily wages basis as beldar in the

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year 1996 and was retrenched with effect from 19.3.1998. The workman had approached the H.P. State Administrative Tribunal by way of O.A.(M)-378/1998 immediately after his retrenchment. The H.P. State Administrative Tribunal had permitted him to withdraw the original application with liberty reserved to file a fresh petition on the same cause of action before appropriate forum vide order dated 21st July, 2004.

The workman was retrenched on 19th March, 1998 and thereafter he had approached the H.P. State Administrative Tribunal and the original application remained pending till 2004. It appears that during the pendency of original application he had raised the industrial dispute which was referred for adjudication by the State Government to the Labour Court in the year 2003. The Labour Court had rejected the reference only on the ground of delay and laches. The Labour Court should have heard the matter on merits and delay and laches could be considered at the time of grant of relief. The Hon'ble Supreme Court in the latest pronouncement reported in **State of Punjab versus Anil Kumar, JT 2007 (7) SC, 559** has up-held the reinstatement of the workman, but had modified the award of the Labour Court and of the High Court granting the back wages though the dispute was raised after 13 years. Their Lordships of the Hon'ble Supreme Court have held as under:-

> **"In view of the factual position as highlighted above, we do not find any infirmity in the order passed by the Labour Court as affirmed**

by the High Court so far as entitlement of the respondent-workman to be re-instated.

At the same time the fact that there was belated approach cannot be lost sight of. Admittedly, there was belated approach and the Labour Court was moved after 13 years.

In the peculiar circumstances of the case while upholding the direction for reinstatement, we direct that the directions given by the Labour court as affirmed by the High Court regarding payment of back wages need to be modified.

In the aforesaid background, the direction for payment of back wages stands set aside while the direction for reinstatement is maintained."

In the present case, the workman was pursuing his remedy before the H.P. State Administrative Tribunal since 1998 and he was permitted to withdraw his original application on 21.7.2004. The workman could not get the benefit of sub-clause 2 of Clause 14 of the Certified Standing Orders framed by the Board since they have ceased to apply after the year 1992. The Labour Court was required to consider the plea of the workman only with regard to the violation of Sections 25-F and 25-G of the Act.

Accordingly, this petition is allowed and the award dated 13.6.2006 is set aside with a direction to the H.P. Industrial Tribunal-cum-Labour Court, Dharamshala to decide the reference afresh on its merits within a period of three months

from today. To avoid delay, the parties are directed to appear before the H.P. Industrial Tribunal-cum-Labour Court, Dharamshala on 17th August, 2007. There shall be no order as to costs.

(Rajiv Sharma) Judge.

August 1, 2007.
(sck)